

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 24221 of 2014
Date of Decision: 6.10.2016

Kulwinder Singh

.....Petitioner

Vs.

Financial Commissioner (Revenue) Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Harsh Bunker, Advocate
for the petitioner.

Mr. B.M. Vinayak, DAG, Punjab.

Mr. Saranpreet Singh Gurna, Advocate
for respondent No.5.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 14.10.2014 (Annexure P-6), passed by the Financial Commissioner, (Revenue), Punjab, whereby appeal filed by the petitioner was dismissed and the order dated 2.7.2013 (Annexure P-4) passed by the Commissioner, Jalandhar Division, Jalandhar, was upheld, setting aside the order dated 20.12.2011 (Annexure P-2) passed by the District Collector.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner was appointed as Lambardar by the District Collector vide order dated 20.12.2011 (Annexure P-2). Feeling aggrieved, respondent No.5 namely Joga Singh, filed his appeal before the

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Commissioner, Jalandhar Division, Jalandhar, which was allowed vide order dated 2.7.2013 (Annexure P-4). Petitioner challenged this order before the Financial Commissioner by way of appeal which came to be dismissed by the Financial Commissioner vide impugned order dated 14.10.2014 (Annexure P-6). Hence this writ petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, present writ petition deserves to be allowed. Impugned orders passed by the Commissioner as well as Financial Commissioner are patently illegal orders and the same cannot be upheld, for the following more than one reasons.

A bare reading of the order passed by the District Collector would show that petitioner was having a clear edge over respondent No.5. Even if contention raised by learned counsel for respondent No.5 that respondent No.5 was not a taxi driver and was living in the village, is accepted and both the candidates are treated almost at par regarding their age, educational qualifications and ownership of land, yet all the lower revenue authorities, including the Sub Divisional Magistrate, Nakodar, have made their recommendations in favour of the petitioner. In such a situation, statements made by some of the villagers against the petitioners will not render him ineligible for the appointment to the post of Lambardar, as sought to be argued by learned counsel for respondent No.5. Having said that, this Court feels no hesitation to conclude that District Collector was well justified on facts as well as in law, while passing self contained order dated 20.12.2011 (Annexure P-2),

thereby appointing petitioner as Lambardar.

It is the settled proposition of law that choice of the District Collector, in the matters of appointment of Lambardar, is not to be upset lightly by the higher revenue authorities, until and unless the order passed by the District Collector is found suffering from any patent illegality or perversity.

During the course of hearing, no such patent illegality or perversity has been pointed out by learned counsel for respondent No.5 in the well reasoned order passed by the District Collector. In fact, in the peculiar fact situation obtaining on record in the present case, it is unhesitatingly held that Commissioner, Jalandhar Division, Jalandhar, exceeded his jurisdiction, while replacing the well justified choice of the District Collector with his choice and that too, without there being any justification. Recording cogent findings that order passed by the District Collector was suffering from patent illegality was sine qua non at the hands of the Commissioner, however, he failed to do so, because of which the order passed by him is patently illegal order, besides being an order without jurisdiction.

Similarly, Financial Commissioner also failed to appreciate the material aspect of the matter that choice of District Collector, in the matters of appointment of Lambardar, will not be upset lightly by the higher revenue authorities, until and unless the order passed by the District Collector was found suffering from any patent illegality or perversity. A bare reading of the impugned order passed by the Financial Commissioner would show that he proceeded almost on a similar line on which the Commissioner passed his patently illegal and perverse order. No doubt, choice of the District Collector in appointing the Lambardar would not be an absolute rule in every given situation, yet it is equally true that higher revenue authorities are under legal

obligation to record plausible reasons, while upsetting his choice. No reason much less cogent reason has been given either by the Commissioner or by the Financial Commissioner, while passing their respective impugned orders, because of which the same cannot be sustained. Under these circumstances, it can be safely concluded that only order which is factually correct and legally justified order is the order passed by the District Collector and the same deserves to be restored.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that impugned order dated 14.10.2014 (Annexure P-6) passed by the Financial Commissioner as well as order dated 2.7.2013 (Annexure P-4) passed by Commissioner, Jalandhar Division, Jalandhar, are patently illegal orders and the same cannot be sustained. Consequently impugned orders (Annexure P-4 and P-6) are set aside. Writ petition deserves to be accepted. Order dated 20.12.2011 (Annexure P-2) passed by the District Collector, appointing petitioner as Lambardar of the village, is hereby restored.

Resultantly, with the abovesaid observations made, present writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

6.10.2016
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Whether speaking/reasoned Yes/No
Whether reportable: Yes/No